

REMARKS

The present application includes claims 1-11, 14-23, 25-32, 34-37, 40-46, and 49. Claims 1-11, 14-23, 25-32, 34-46, and 48-49 were rejected by the Examiner. By this Response, claims 1, 14, 25, 34, and 49 have been amended.

Claim Amendments

By this Response and per the Examiner's suggestion to obtain allowance of the pending claims, claims 1, 14, 25, 34, and 49, have been amended. While the Applicant reserves the right pursue the claims in their original and/or other forms in a continuation application, the Applicant submits that, for at least the reason of the amendment, the pending claims represent patentable subject matter allowable over the prior art of record. Independent claims 1, 14, 25, 34, and 49 have all been amended to specify that the portal is hosted by the remote data center. In contrast to the cited art, specifically Killcommons, which provides the user interface in web page form to a user unit via an email and then has the user's computer assemble and display the web interface locally, the presently pending claims recite a portal hosted by the remote data center, rather than by the user accessing the data. These limitations are neither taught or suggested by either the Killcommons or Rothschild references and, therefore, cannot be present in their theoretical combination. Thus, the Applicant respectfully submits that amended independent claims 1, 14, 25, 34, and 49, as well as their respective dependent claims 2-11, 15-23, 35-37, and 40-46 should be allowable over the cited art of record.

§ 103 Rejection Response

Claims 1-11, 14-23, 25-32, 34-46, and 48-49 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Killcommons et al. (U.S. Patent No. 6,424,996) in view of Rothschild et al. (U.S. Patent Application Publication 2002/0016718).

The Applicant turns to the Examiner's rejection of claims 1-11, 14-23, 25-32, 34-46, and 48-49 as being unpatentable over Killcommons in view of Rothschild. The Applicant traverses this rejection for at least the following reasons.

The Killcommons Reference

The Applicant refers to and incorporates by reference the remarks provided in the previous response filed on June 6, 2006 (and resubmitted with the RCE filed on July 11, 2006). Rather than repeat many of these arguments, the Applicant refers to the previous arguments and provides the following additional remarks to illustrate to the Examiner how the presently pending claims are distinct from the cited art of record, namely Killcommons and Rothschild.

Killcommons reference includes a server having an assembly unit gathering selected data to form an email package, as well as a processing unit to encode and compress the data prior to packaging, and an email server ending the package to a user unit. *See, e.g.*, Abstract. The user unit includes a browser enhancement module requesting an email file from the server, decompressing and decoding received files in the email, and displaying the decoded files along with a received and constructed user interface to a display associated with the user unit. *See, e.g.*, Abstract.

Thus, in Killcommons, studies are pushed to a user via email "so that the files are already available *at the user's computer* when the user is ready to view the data." Col. 3, lines 9-11

(emphasis added). A server stores medical data, and a user interface provided via email by the server allows the user to view the medical data on the user's local computer. Col. 3, lines 58-64. An assembly unit forms an email package which is sent, along with the user interface, to the user computer via the email server. Col. 3, line 66 – col. 4, line 22. Thus, the user interface is provided to the user computer in an email package which also includes the data to be viewed. The data is then stored locally on the user computer, and the server can be uninvolved in the analysis and use of the data by the local user computer's browser enhancement module working in conjunction with the local received copy of the user interface web page.

Unlike the remote or application service provider model recited in some or all of the pending claims, the user in Killcommons does the work with the information and interface received via email from the server. *See, e.g.*, col. 10, lines 35-40 and col. 11, lines 30-63. Thus, the user interface web page, as shown in Fig. 4, is generated locally on the user unit from an email package sent from the server and received at the user unit, rather than viewing a web page or other portal at a server remotely via a browser.

Additionally, with respect to providing medical services, the Examiner points to a quote in Killcommons which states that an operator “may select from various instances of treatment or separate types of data, e.g., laboratory results, radiology with reports or pathologies.” Col. 9, lines 37-39. The Examiner appears to be asserting that Killcommons is providing a service by providing treatment via the information downloaded from the server to the local user computer. The Applicant respectfully disagrees. In reading Killcommons, it does not appear that the Killcommons email package provides a treatment or any other such service to a user. Rather, the email package of Killcommons allows a user to locally review the **results** of different instances

of treatment, also referred to as patient studies. *See, e.g.*, col. 9, lines 37-41. Thus, the Killcommons system only provides data or information, not services.

Thus, the Applicant submits it is clear that Killcommons, which employs a server to gather image data into an email that is sent via an electronic mail program to a user computer to be extracted and stored on the local user's machine, is far removed from the presently claimed invention (*see, e.g.*, col. 3, ln. 31 – col. 4, ln. 22 and col. 9, ln. 42 – col. 10, ln. 57). The Killcommons system “pushes” the email data to the user's local machine as opposed to employing a centralized, application service provider model. To that end, Killcommons assembles the medical data and user interface into an *email for local storage* rather than remotely providing access via a *portal* from a remote data center. Shifting functionality from a user to a server, and thus eliminating the browser enhancement module and email exchange, would be counter to the teachings of Killcommons, as shown in Figures 1, 2(a-d) and 3 and associated description. Furthermore, as stated by the Examiner, Killcommons does not teach, nor does it fairly suggest, a remote data center.

While the Examiner admits that none of the cited references discloses the claimed provision of medical content and medical services, the Examiner asserts that the limitations regarding medical content and medical services represent “non-functional information stored and accessed by the accessible portal.” The Examiner asserts that the medical content and medical services “are not functionally related to the functions of the centralized medical information system ... and will not distinguish the claimed invention from the prior art in terms of patentability.”

However, in reviewing the *In re Gulack* decision cited by the Examiner, the Board of Patent Appeals and Interferences, and the Court of Appeals for the Federal Circuit reviewing the Board's decision, focused on the functional relationship between components of the claims and whether a meaningful functional relationship gives patentable weight to certain components. Here, a functional relationship certainly exists between the medical content and medical services provided by the remote data center and the portal through which they are provided to the user. The web page discussed in Kilcommons is a different type of locally-constructed and locally-driven construct than the remotely hosted and provided portal of the present claims. Additionally, the web page of Killcommons provided information sent to the user in an email but does not provide services, such as time management services, educational services, administrative services, etc., via a portal as recited in the pending claims.

As illustrated when reviewing Killcommons and the other cited art, a remotely-hosted portal, let alone any portal, providing medical services in addition to medical information is not found in the cited art of record. Such a combination of services and information is novel and relates to the portal, which is used to provide such services and information to the user rather than forcing the user to rely only on local services and information at a user terminal. As noted in *In re Gulack*, “[d]ifferences between an invention and the prior art cited against it cannot be ignored merely because those differences reside in the content of the printed matter”, or in this case the content (i.e., medical information and services) provided via the portal. Thus, according to the reasoning established by the Board and the Federal Circuit, such subject matter having a functional relationship is and should be entitled to patentable weight in distinguishing the presently pending claims over the prior art of record. As such, the Killcommons reference clearly lacks such a portal provided by a remote data center to allow access to and use of medical

information *and medical services*. Thus, the Applicant respectfully submits that the pending claims define allowable subject matter.

The Rothschild Reference

Turning now to Rothschild, in order to anticipate the presently claimed invention, Rothschild must reasonably cure the many deficiencies of Killcommons with respect to the pending claims.

The Examiner states that Rothschild is relied on to teach a medical *image* management system that includes a central data management system (item 30 in Figure 4), which is located *remotely* from the medical image system and the remote image viewing system (item 40 in Figure 4 and paragraph 155). As discussed previously, Rothschild fails to remedy the deficiencies of the Killcommons reference with respect to the pending claims. Even combining the disclosure of Rothschild with Killcommons fails to teach or suggest the portal and remote provision of information and services recited in the presently pending claims. For example, Rothschild teaches a medical image management system that uses a central data management system to centrally manage the storage and transmission of medical images between remotely located facilities. *See, e.g.*, Abstract. Specifically, Rothschild teaches the electronic delivery of medical images to doctors and other interested parties preferably using “push” technology, which delivers an image to a remote image viewing system. *See, e.g.*, page 5, paras. [0036] and [0042]; page 6, paras. [0053-54]). A polling system is provided so that remote or local workstation may request queued data to be delivered that is awaiting delivery in a medical image database management system. Page 9, paras. [0089-90]. Additionally, Rothschild provides a system for

tracking delivery of the image. Page 5, para. [0037] and page 7, para. [0068]. Rothschild does not provide medical services as recited in the pending claims of the present application.

Thus, the Applicant respectfully submits that Rothschild clearly does not teach or fairly suggest providing other medical *information*, including patient information, library information and administrative information, for example, via a portal. Additionally, Rothschild does not teach providing *medical services*, such as time management services, educational services, and administrative services, *via a portal hosted by a remote data center*. Rothschild does not teach or reasonably suggest *remotely* executing and providing medical services via a portal or web site. Rothschild does not teach or fairly suggest a portal providing a single access point for access to medical content and medical services. Rather, Rothschild addresses a medical *image* management system capable of communicating medical *images* in the form of electronic records. *See, e.g.*, Abstract.

Accordingly, the Applicant respectfully submits that Rothschild does not teach or fairly suggest the limitations claimed by the present application.

Since neither Killcommons nor Rothschild teach or fairly suggest providing access to and viewing of medical content, including a medical image and at least one of patient information, library information and administrative information, and providing remote execution of and interaction with medical services, including time management services, educational services, and administrative services, via a portal hosted remotely from the user by a remote data center, any combination of Killcommons and Rothschild still faces at least this deficiency with respect to the pending claims. Furthermore, hosting medical content and services and providing such content and services remotely runs counter to the teachings of Killcommons, which places a premium on

the rapid communication of complete files via email and the pushing of information to the local user to ***rely on the local user to provide the processing power*** to view and/or manipulate the images and the storage capacity to store the images.

The Applicant hopes that the additional explanation provided herein has clarified the disclosure and scope of the Killcommons reference and the inability of Rothschild to cure its defects. Accordingly, the Applicant respectfully submits that claims 1, 14, 25, 34, and 49 and their respective dependent claims are allowable over the prior art of record and are patentable for at least the reasons given above. Allowance of claims 1-11, 14-23, 25-32, 34-37, 40-46, and 49 is respectfully requested.

CONCLUSION

The Applicant submits that the present application is in condition for allowance. If the Examiner has any questions or the Applicant can be of any assistance, the Examiner is invited and encouraged to contact the Applicant at the number below.

The Commissioner is authorized to charge any additional fees or credit overpayment to the Deposit Account of GEMS-IT, Account No. 502401.

Respectfully submitted,

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